

In the Matter of Arbitration

between

Sacramento County Fire Protection
District

and

The Sacramento Area
Firefighters Local 522
I.A.F.F. (AFL.CIO)

S, Grievant
Termination for Just Cause

John F. Wormuth
Arbitrator

Case A-01-200

August 1, 2001

1 This Arbitration arises from a grievance filed by S (aka C. Z), hereafter referred to
2 as the Grievant, under the terms and conditions in force at the time between the
3 Sacramento County Fire Protection District, hereafter referred to as the District and
4 The Sacramento Area Firefighters Local 522 I.A.F.F., AFL-CIO, hereafter referred
5 to as the Union, appealing the termination of the Grievant from his position as a
6 firefighter. Authority for this Arbitration is the Memorandum of Understanding that
7 was then in force between the District and the Union, Article 35, Grievance
8 Procedure, Step 3. This Arbitration was heard on June 14, 2001 commencing at
9 10:00 am at the offices of the Sacramento Metropolitan Fire Protection District,
10 2101 Hurley Way, Sacramento, California. The Sacramento County Fire Protection
11 District and the American River Fire Protection District effective December 1, 2000,
12 became the Sacramento Metropolitan Fire Protection District.

13 The parties mutually selected John F. Wormuth as the Arbitrator in this
14 matter to render a final and binding award. The parties agreed that this matter is
15 timely and properly before the Arbitrator, all procedural requirements having been
16 met. At the conclusion of the hearing, the Arbitrator requested that both parties
17 submit post hearing briefs to be mailed by 5:00 pm on June 27, 2001. Post hearing
18 briefs on behalf of the District and the Union were received in a timely manner and
19 in good order on June 29, 2001. There were no stenographic or recording devices
20 used to transcribe the hearing, but the Arbitrator took detailed notes.

21 The parties were given full opportunity to present evidence, examine and
22 cross-examine witnesses and to produce exhibits, and to present argument and
23 availed themselves of the opportunity to do so. The District introduced fifteen (15)
24 Exhibits and the Union introduced one (1) exhibit, all of which were admitted into
25 evidence and are incorporated herein by reference.

APPEARANCES

ON BEHALF OF THE SACRAMENTO COUNTY FIRE PROTECTION DISTRICT:

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Kronick, Moskovitz, Tiedemann & Girard
400 Capitol Mall, 27th Floor
Sacramento California, 95814-4417

ON BEHALF OF THE UNION:

Val R. Schiele, Executive Director
Employee Representation Services, Inc.
3050 Fite Circle, Suite 160
Sacramento, California 95827-1808

ISSUE

The parties have agreed that the issue before the Arbitrator is:

“Is there just cause to terminate S from his employment with the Sacramento County Fire Protection District based upon charges of fraud, dishonesty, willful violation of rules set forth in operating manuals, and theft? If not, what is the appropriate remedy?”

1 FACTUAL BACKGROUND

2 The Grievant was hired as a firefighter in 1987 and rose to the position of
3 a paramedic. On August 23, 1995, the Grievant sustained an industrial injury that
4 was adjudicated on November 30, 2000. As part of the adjudication the Grievant
5 agreed to dismiss with prejudice the accusation of a violation of Labor Codes 132a
6 and the appeal of denial of rehabilitation benefits. On May 15, 1997, the Grievant
7 lost his status to practice as paramedic and returned to the classification of
8 firefighter.

9 On or about February 21, 1998, Deputy Chief T M, who was at that time
10 Director of Human Resources for the District, received an anonymous telephone
11 call from one of the Stations. This telephone call alleged that the Grievant was
12 working for a private Ambulance Company while receiving Worker's Compensation
13 Benefits from the District. This caused the District to refer the matter to its Worker's
14 Compensation Administrator, Northern California Special District's Insurance
15 Authority. The insurance authority ordered a *sub rosa* investigation that concluded
16 that the Grievant was working for a private ambulance company while receiving
17 Worker's Compensation Benefits.

18 Upon receipt of this finding the District subsequently charged the Grievant
19 with violation of Article 34, Disciplinary Actions. A *Skelly* hearing was conducted
20 by the District and it resulted in the termination of the Grievant from employment
21 on March 16, 1998.

22 Pursuant to the Memorandum of Understanding, Article 35, Grievance
23 Procedure, the Grievant filed a Grievance appealing his termination from
24 employment.
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1 Grievant failed to report this employment and continued to collect Temporary Total
2 Disability (TTD) from the District, until his return to full duty on August 30th, 1997. The
3 Grievant obtained and received Worker's Compensation Benefits for the period of
4 December 19th, 1997 through February 26th, 1998 in the form of Temporary Total
5 Disability (TTD) Benefits. On December 28th and 30th 1997, and February 15th, 1998,
6 the Grievant worked as a paramedic for the A L A Company in S C, California. The
7 Grievant again failed to report this employment to the District and continued to receive
8 Worker's Compensation Benefits, until his return to full duty on February 26th, 1998.

9 In the periods of alleged disability from July 17th, 1997 through August 29th 1997
10 as well as December 19th, 1997, though February 26th, 1998, the Grievant's treating
11 physician, D D. A, M.D., placed him on full work restrictions. This prohibition precluded
12 the District from utilizing the services of the Grievant in any assignment including light
13 duty. An independent determination was made by the Division of Worker's
14 Compensation, Rehabilitation Unit, which found that the Grievant on December 28th,
15 and 30th, 1997 worked against the medical advice of his treating physician.

16 The Grievant violated his contractual obligation to inform the District, consistent
17 with any restrictions imposed by his treating physician, of his availability to accept and to
18 perform light duty assignments. Codification of this requirement is found in the
19 Sacramento County Fire Protection District Policy and Procedures Manual sections
20 171.105, 171.106, and on Workers' Compensation Injury Packet, a copy of which was
21 provided to the Grievant. The Grievant was informed of his reporting requirement on
22 each and every occasion that he was absent from duty because of a work related injury.

23 The Grievant's collection and acceptance of Worker's Compensation benefits
24 while simultaneously performing like or similar work as a paramedic for a private
25 ambulance company is an egregious violation of his contractual obligation to the District.
26 This willful deceptive conduct by the Grievant resulted in the District's payment of

monies to him for which he bore no entitlement. Based upon the evidence submitted and the compelling testimony presented, the District has met the necessary burden to establish that it terminated the Grievant from employment for Just Cause.

POSITION OF THE UNION

It is argued by the Union that the Grievant did not receive monies from Worker's Compensation to which he had no legitimate entitlement. The Grievant's absence from duty is the direct consequence of an undisputed industrial injury and the Grievant's inability to perform his duties as a Paramedic Firefighter for the Sacramento County Fire Protection District. Throughout the entire episodes of his absence from duty, the Grievant faithfully followed the instructions of his treating physician. These instructions regulated the level of work activity that was medically prudent for the Grievant to perform. In conversations with his treating physician the Grievant arrived at an understanding that working as a paramedic for a private ambulance company would not be inconsistent with his industrial injury. In fact, such private employment had an effective therapeutic value and did accommodate the need for the Grievant to maintain his skills as a paramedic. Based upon a telephone call placed to the District by his treating physician, the Grievant was advised that there was no light duty assignment available. Having been so informed, the Grievant concluded that working for a private ambulance company would not be a violation of the District's Policy and Procedures Manual, or his contractual obligations provided for in Article 34 of the Memorandum of Understanding.

In his dealings with the District the Grievant has always conducted himself in an honest and forthright manner. Evidence of this is demonstrated by the fact that the Grievant never concealed from the District that he worked in an off duty capacity for a private ambulance company. Since the Grievant believed that his private employment was common knowledge, it caused him no concern when his treating physician informed

1 him that the District had no light duty assignments as a paramedic non-firefighter. This
2 information appeared to be logical, as the Grievant believed that the duties of a
3 Paramedic Firefighter are far more demanding than those of a paramedic for a private
4 ambulance company.

5 Additionally, in June of 1996 the Grievant was not on duty when station drills
6 were conducted regarding the reporting requirements contained in sections 171.105 and
7 171.106 of the Policy and Procedures Manual. This placed the Grievant at the
8 disadvantage of being unaware of his obligation to report the potential availability of light
9 duty assignment to his treating physician. Contingent upon the treating physician's
10 approval for light duty assignment, the Grievant was unaware of his subsequent
11 responsibility to report availability for light duty assignment to the District. The Grievant
12 assumed that by reporting his medical condition factually clear and without reservation to
13 his treating physician, all the reporting requirements imposed by the District would be
14 complied with. Further, it is not reasonable for the District to require that the Grievant
15 have knowledge of a reporting requirement beyond than to his physician, since the
16 Grievant didn't benefit from the training offered by the District. The District places an
17 undue burden on the Grievant by expecting him to have familiarity with the inner
18 workings of the Worker's Compensation System and how the District administers its
19 program. It is appropriate for the District to expect the Grievant to comply with the
20 directions of his treating physician. The Grievant's treating physician is best able to
21 distinguish the differences, complexities and demands between duties performed on
22 behalf of one employer as opposed to the other, even though these duties may share
23 similar functions and requirements. It is therefore not a leap of faith for the Grievant to
24 rely upon this expertise when he accepted occasional employment as a paramedic with
25 a private ambulance company.

1 In the instant case, the Grievant properly relied upon his treating physician when
2 he was advised that working as a paramedic for a private ambulance company was not
3 adverse to his industrial injury, and that the District had no compatible light duty
4 available. At the very most, the Grievant is guilty of an innocent error. This error is
5 inadvertent because the Grievant never concealed his long standing off duty
6 employment and had no reason to doubt that appropriate light duty was not available
7 from the District. The Grievant sincerely believed that the job requirements imposed by
8 the District exceeded his medical capability. By comparison, the duties performed by the
9 Grievant for the private ambulance company were custodial in nature, consisting
10 primarily of transporting non-emergency patients from one facility to another. These
11 differences in duties indicated to the Grievant that he was performing at a substantially
12 lower level of responsibility and physical demand when employed by the private
13 ambulance company, as compared to those duties mandated by District employment.

14 In view of the Grievant's limited understanding of his responsibility to report
15 availability for light duty and outside employment to the District, it is reasonable to
16 conclude that the Grievant lacked the necessary intent and motivation to prove and
17 sustain the charges for a Just Cause termination. The Grievant failed to understand the
18 reporting requirements of the District, and when confronted with the facts, he admitted to
19 them. This clearly indicates and supports the finding that the Grievant made an honest
20 error when he followed the advice of his treating physician. The Grievant has no prior
21 history of dishonesty, or disciplinary actions, and none are alleged to have occurred.
22 Accordingly, there is no rationale or evidence to support the proposition that the
23 Grievant's actions and behavior were in fact dishonest, fraudulent, or willfully
24 disobedient. In view of these circumstances, the District has not met its burden of proof
25 required by the Just Cause standard. The penalty of termination for these alleged
26 offenses is not supported by the facts.

1 It is further argued that if the Grievant is medically fit to return to unrestricted
2 duty, or is judged fit for compatible light duty, such should be the award in this matter,
3 retroactive to the date of termination.

4 **DISCUSSION**

5 There is no dispute or controversy regarding the fact that while in the line of duty
6 on August 23rd, 1995, the Grievant did sustain a compensable Worker's Compensation
7 injury. Between August 23rd, 1995, and July 23rd, 1997, on several occasions, the
8 Grievant's industrial injury caused him to be off duty. These absences were at the
9 direction and authorization of the Grievant's treating physician and were in full
10 compliance with the District's Policy and Procedures Manual, and applicable sections of
11 the Memorandum of Understanding. During the above referenced periods of industrial
12 disability, the Grievant was deemed eligible for and received benefits provided in Labor
13 Code section 4850. These benefits expired on July 23rd, 1997, at which time the
14 Grievant was deemed eligible for and received Temporary Total Disability (TTD)
15 Benefits.

16 The District supports the termination of the Grievant for Just Cause based upon
17 his fraudulent and unwarranted collection of Temporary Total Disability (TTD) while
18 actively seeking and accepting employment as a paramedic for a private ambulance
19 company. The Grievant on May 15th, 1997, lost his certification to practice as a
20 paramedic-fire fighter and this loss of certification caused the return of the Grievant to
21 the classification of firefighter. Despite the inability of the Grievant to work as a
22 paramedic-firefighter, the District did have various qualifying light duty assignments
23 available. These included a staff paramedic position, which did not require the same
24 performance standards expected of a practicing paramedic who is responsible for direct
25 patient care. This staff position imposed no requirement for the Grievant to work under
26 the licensure of the medical doctor responsible for the paramedic program. In addition,

1 there were other administrative positions for which the Grievant was eligible. Creditable
2 testimony was offered on behalf of the District that indicated light duty assignments can
3 be and are routinely modified as to accommodate and comply with medical restrictions
4 imposed by a treating physician. It is evident, that the Grievant's eligibility for light duty
5 assignment is not contingent upon his satisfactory performance as a paramedic, or his
6 ability to do so at a future date. In fact, the District had several light duty assignments
7 available to the Grievant in his classification as a firefighter.

8 The Grievant testified that, based upon the restrictions imposed by his treating
9 physician, he could not work for the District in the capacity of a firefighter. The Grievant
10 further testified that the nature of the restrictions imposed by his treating physician
11 specifically precluded work as a firefighter. The only work that the Grievant believed to
12 be acceptable to his treating physician was transport medic, for the private ambulance
13 company.

14 Specifically, Dr. A. did not release the Grievant to firefighter status, (because) "I
15 had taken him off work duty as a firefighter, which involves heavy lifting, carrying,
16 pushing, pulling etc., with other peoples' lives being potentially at risk secondary to his
17 knee pain" (Union Exhibit. 1). The date of Dr. A's report is March 9th, 1998 and refers
18 to the Grievant's treatment for patellar tendonitis during the disability period of December
19 19th, 1997 through February 26th, 1998.

20 The Grievant testified that the duties that he performed at the private ambulance
21 company involved none of the precluded activities of a firefighter. In fact, he was
22 primarily responsible for the non-emergency transport of stable patients from one facility
23 to another. Frequently, the only duties the Grievant performed was to drive the
24 ambulance, which further reduced patient care requirements, such as heavy lifting,
25 carrying, pulling, and pushing. Upon the occasions when the Grievant was not driving,
26 he testified that his duties in the back of the ambulance were light and did not require

1 great physical exertion. Further, these duties allowed the Grievant to protect and care
2 for his industrial injury in compliance with the directions of his treating physician. The
3 Grievant testified that he was able to ice his knee and to elevate it when necessary. The
4 Grievant indicated that this accommodation was possible due to the stability of the
5 patients that he transported. The Grievant testified that he never sought this same
6 accommodation from the District for this industrial injury.

7 The Grievant testified that when the Policy and Procedures Manual Sections
8 171.105 and 171.106 were brought to the attention of the work force in June of 1996 he
9 was off duty. He further testified that he never received a copy of sections 171.105 or
10 171.106 and did not participate in station drills designed to familiarize him with the
11 contents. As a result, the Grievant testified that he never had proper notice of the
12 requirements of sections 171.105 or 171.106.

13 It is argued that because the Grievant never had proper notice of the obligation to
14 report availability for light duty and was unaware of the requirement to do so, this is a
15 mitigating factor. However, this position ignores the Grievant's past participation in light
16 duty. Undisputed testimony and evidence were offered that while receiving Labor Code
17 Section 4850 benefits between August 23rd, 1995 and July 23rd, 1997, the Grievant
18 worked light duty on three separate instances. They are: August 31st, 1995 through
19 October 4th, 1995; July 1st. through 10th, 1996; and September 15th, 1996, through
20 January 2nd, 1997.

21 It is obvious the Grievant managed to successfully navigate the light duty
22 requirements as evidenced by his participation. The very lack of notice the Grievant
23 relies upon as a mitigating factor was issued in June of 1996, and the Grievant
24 subsequently worked light duty on two occasions, July 1st, through 10th, 1996 and
25 September 16th, 1996, through January 2nd, 1997.

1 Deputy Chief, M, testified that the District is able to accommodate work
2 restrictions and successfully does so. Credible testimony was offered explaining the
3 types of accommodations that the District can provide to injured employees, and that
4 the District welcomes light duty employees because their services relieve a heavy
5 administrative workload. Deputy Chief M persuasively testified that neither the Grievant
6 nor his treating physician notified the District of his availability for light duty, during the
7 disputed periods of disability.

8 I Y, Human Resources Analyst, testified that she made at least four attempts to
9 contact the Grievant's treating physician by telephone in an effort to determine his
10 fitness for duty and all these inquires proved to no avail. Significantly, the Grievant
11 made no effort to clarify his availability or unavailability for duty, but remained content to
12 allow a state of confusion to endure. The Grievant clearly evaded and ignored his
13 contractual responsibility to keep the District informed of his availability and fitness for
14 duty. An examination of District Exhibit 13 is instructive, specifically, the form titled
15 "Employee's Return to Work Report". The beginning of the form reminds the employee
16 of his/her responsibility "Per PPM 171.105...for notifying Human Resources of his/her
17 work status by submitting this form within 24 hours of treatment". This requirement is
18 mandatory and is expressed in clear and unambiguous terminology. This mandatory
19 requirement is again expressed in bold type on the form titled "Acknowledgment of
20 Receipt of Employee Claim Form". This particular form requires the signature of the
21 Grievant, as well as that of a "Manager, Supervisor, or Lead Person". Undisputed
22 testimony was offered, that on every single instance that the Grievant was off duty as the
23 result of an industrial injury, that he was given a complete "Worker's Compensation
24 Injury Packet" (District Exhibit 13). In fact, in his testimony the Grievant acknowledged
25 receipt of the packet.

1 The "Employee's Return to Work Report" contains pertinent shaded sections
2 advising a treating physician of the District's policy concerning light duty. Although the
3 willingness and ability of a physician to accurately fill out any form is beyond the
4 immediate control of the Grievant, this still does not mitigate or alleviate the obligation to
5 inform the physician of the availability of light duty. Knowledge of this requirement is not
6 unduly burdensome for the Grievant, having been repeatedly informed of it. Common
7 sense would suggest that the Grievant would have read all of the forms in the Worker's
8 Compensation Injury packet" since at a minimum, it is in his best economic interest to
9 do so. This is especially compelling when consideration is given to the fact that the
10 Grievant had to fill out specified sections of the forms found in the packet. What is
11 important here is the Grievant's role in securing light duty is not a passive one, but an
12 active one which engages and anticipates the Grievant's cooperation. It is abundantly
13 clear that the Grievant did not cooperate and made little or no effort to secure a light duty
14 assignment from the District, at the time when he was able to work for a private
15 ambulance company.

16 The underlying issue here is not the type of work that the Grievant may have
17 been capable of performing, but the fact that he could work. The penultimate issue is
18 that the Grievant was able to work for the District but elected to work for a private
19 ambulance company. He worked for the private ambulance Company as a paramedic
20 at the time his treating physician prohibited him from working in any capacity for the
21 District, up to and including light duty. This constitutes on the Grievant's part an
22 egregious violation of the District's Policy and Procedures Manual and Article 34 of the
23 Memorandum of Understanding.

24 If the Grievant did not know, he should have known that while receiving
25 Temporary Total Disability (TTD) any employment is precluded. The very definition of
26 disability as defined in Webster's New World Dictionary states: "*disability*: 1) a *disabled*

1 *condition, 2) that which disables or disqualifies.* In view of the fact that the Grievant
2 worked as a paramedic he had to be familiar with this common definition of disability.
3 This should have instructed the Grievant that he cannot be considered disabled and
4 unable to work for one employer and at the same time seek and accept employment
5 from a different employer.

6 The Grievant's representative argues that since the District has not filed criminal
7 charges this is an indication that no fraud, or theft of monies has occurred. However,
8 no such conclusion can be drawn. The purpose of this inquiry is to determine if Just
9 Cause exists to terminate the Grievant pursuant to Article 34 of the Memorandum of
10 Understanding and applicable rules and regulations of the District. Therefore, no finding
11 is issued, or opinion rendered, as to potential criminal liability, if any, in this matter. This
12 issue exceeds the authority of the Arbitrator.

13 In evaluating the propriety of the penalty imposed in the instant case, it is
14 important to note that the underlying facts are not in dispute. The parties to this
15 Arbitration have stipulated that there are no due process or procedural issues to be
16 determined. The Grievant has admitted that he did work for the private ambulance
17 company as a paramedic on the dates in question.

18 The circumstance giving rise to discipline under Article 34, Disciplinary Actions is
19 clearly stated. A pertinent part of Article 34, Section D, is "*The illustrations of*
20 *unacceptable conduct cited below are to provide specific and exemplary reasons for*
21 *initiating disciplinary action, and to alert employees to the more common types of*
22 *employment conduct violations*" (*Emphasis added*). This provision was negotiated by
23 the parties for the purpose of defining unacceptable conduct that may be subject to
24 discipline and to alert bargaining unit members to the potential consequences of such
25 unacceptable conduct. This provision serves the purpose for which it was intended and
26 provided proper and due notice to the Grievant.

1 The enumerated items 1 through 21 in Section D of Article 34 are clear and
2 unambiguous. Although this enumeration is not intended to be an exclusive list, the
3 issues in this matter fall within the jurisdiction and context of items 1, 6, 13 and 17, of
4 Section D. There is no deficient or improper application of the standards
5 encompassed in Article 34, Section D items 1, 6, 13, and 17. Accordingly, there is no
6 violation of the Grievant's contractual rights.

7 The evidence and testimony presented by the District have successfully
8 impeached the testimony and evidence offered by the Grievant. The Grievant offered no
9 persuasive evidence or testimony that might excuse or mitigate his conduct. In addition,
10 no extenuating circumstances were presented that would serve to reduce the penalty
11 imposed by the District. Mitigation of the penalty may have been considered had this
12 been a one-time occurrence. It may then be possible to accept the Grievant's
13 explanation that he made an honest error because, as he testified to, he failed to
14 understand the scope of the duty limitations imposed by his treating physician. If the
15 Grievant's testimony is to be believed that he made an honest mistake, it is not
16 unreasonable to expect that he would have informed both his treating physician and the
17 District of his error when he realized it. However this was not the case, because on two
18 distinct occasions December 28th, and 30th, 1997 the Grievant worked against the
19 medical advice of his own treating physician. (District Exhibit 12). It is apparent that the
20 Grievant's conduct is disingenuous, deceptive, evasive, and untruthful, to both the
21 District and his own physician. Argument was presented, and the Grievant testified,
22 that he has always been truthful about his private employment status. When confronted
23 with the facts of this case he willing admitted to them. What is interesting about this
24 epiphany of honesty is that it occurs when the Grievant is confronted by overwhelming
25 incriminating evidence of wrongdoing. The Grievant's fabled veracity is little more than
26 an act of necessity.

1 It is well-established principle of industrial justice that an employer has no duty to
2 retain a patently dishonest employee. Unrefuted creditable evidence and testimony
3 have been presented that establishes that the Grievant knowingly violated the District's
4 Policy and Procedures Manual and the Memorandum of Understanding. The Grievant
5 had full knowledge that his actions were violations for which he could suffer discipline,
6 up to and including termination. The Grievant did in fact collect Temporary Total
7 Disability (TTD) payments to which he was not entitled because he was able to work.

8 The Grievant's deception has permanently and irreparable damaged the level of
9 trust necessary between an employer and an employee. This trust is an integral part of
10 the employment relationship and is necessary for the orderly conduct of their affairs.
11 When an employee steals from his employer or the employer steals from the employee,
12 their relationship is forever changed. The very bond of performance and fidelity
13 incumbent upon both parties becomes a distant memory.

14 The underlying principle of progressive discipline is the rehabilitation of the
15 employee. It is understood that if a disciplined employee's conduct is rectified as the
16 result of progressive discipline, the interest of both parties is well served. In the instant
17 case, the actions of the Grievant are so persistently egregious, deceptive and patently
18 dishonest that termination is the proper remedy. This penalty is proper when weighed
19 against the offenses that the Grievant acknowledges he committed. The District has met
20 the required burden to discharge the Grievant for Just Cause. A final issue is the
21 Grievant's eligibility for disability retirement benefits from the Public Employee's
22 Retirement System. Both the representative of the Grievant and the District addressed
23 the subject at hearing and discussed it in their post hearing briefs. The determination of
24 retirement benefits is a matter beyond the scope and authority of this arbitration and no
25 opinion is offered or recommendation made concerning this matter. Nothing in this

1 award is intended to support or diminish any rights that the Grievant may have to any
2 entitlement provided by the Public Employee's Retirement System.

3 The Grievant's case was well argued and reasoned. Despite the cogent and
4 forceful arguments presented they are not enough to overcome the plethora of
5 compelling and incriminating evidence presented by the District.

6 **FINDINGS AND CONCLUSIONS**

7 The Grievant did violate Article 34 of the Memorandum of Understanding Disciplinary
8 Actions, Item 1): Fraud. Upon the occasions the Grievant sought and accepted
9 employment as a paramedic for a private ambulance company, while obtaining and
10 accepting Worker's Compensation Benefits, from July 17th, 1997 through August 29th,
11 1997, December 19th, 1997, through February 26th, 1998. This while claiming disability
12 status that precluded him from working for the District. The evidence establishes the
13 Grievant was able to work for the District on August 24th and 28th 1997, December 28th
14 and 30th, 1997 and February 15th, 1998. The District had just cause to terminate the
15 Grievant for violating Article 34 item 1): Fraud.

16 The Grievant did violate Article 34 of the Memorandum of Understanding, Disciplinary
17 Actions, Item 6): Dishonesty, when the Grievant collected Worker's Compensation
18 Benefits to which he was not entitled. The Grievant's deceptive, deliberate and willful
19 failure to inform the District of his availability to work. The Grievant intentionally
20 concealed his true fitness for duty status from the District. The District had just cause to
21 terminate the Grievant for violating Article 34 item 6): Dishonesty.

22 The Grievant did violate Article 34 of the Memorandum of Understanding, Disciplinary
23 Actions, Item 13): "Willful violation of any of the rules set forth in operating manuals
24 used by the District." when the Grievant willfully disobeyed the requirements set forth in
25 the Policy and Procedures Manual of the Sacramento County Fire Protection District,
26 Sections 171.105 and 171.106. The Grievant having been properly notified and advised

1 of the requirements contained therein. The District had just cause to terminate the
2 Grievant for violating Article 34 item 13): "Willful violation of any of the rules set forth in
3 operating manuals used by the District".

4 The Grievant did violate Article 34 of the Memorandum of Understanding, Disciplinary
5 Actions, Item 17): Theft upon the occasions the Grievant accepted Temporary Total
6 Disability (TTD) payments on August 24th and 28th, 1997, December 28th and 30th, 1997,
7 and February 15th, 1998, while engaged in employment as a paramedic for a private
8 ambulance company. The Grievant knew or should have known that the acceptance of
9 disability payments while working for another employer constitutes theft of District
10 monies. The District had just cause to terminate the Grievant for violating Article 34,
11 Item 17): Theft.

12 The District has established that the termination of the Grievant was for Just Cause.

13 The Grievance of S (aka S) is denied

John F. Wormuth
Arbitrator

August 1, 2001

